IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2678 OF 2007

New Basweshwar Shikshan Prasarak
Mandal and ors. ..Petitioners
Vs.
Gangadhar Channappa Belure
and ors. ..Respondents

Mr. S.S. Shah for petitioners.
Mr. K.B. Sonwalkar for respondent nos.1A and 1B.

CORAM: B.H. MARLAPALLE, J.

Date : June 22, 2007.

P.C.:

1. Heard Mr. Shah the learned counsel for the petitioners-original defendants who have suffered the decree of eviction in RCS No. 1235 of 1996. The said preliminary decree was passed on 16/8/2004 by holding that the plaintiff no.1B need the premises for his bonafide reasons. The said decree has been challenged in Civil Appeal No.280 of 2004 and in the said appeal, an application at Exh.24 was taken out by the present petitioners-appellants seeking leave to amend the written statement in the suit and the said application has been rejected by the impugned order dated

3/11/2006. I have perused the contents of the application at Exh.24 and it was not stated that the additional premises as claimed to be available with the present respondent no.1B came to be constructed after the suit was decided and during the pendency of the appeal. On the contrary, the amendment carried out in the written statement as per the order passed on 3/7/2003 below Exh.153 had clearly set out the newly constructed property by the plaintiffs and the same averment have been repeated in the application placed before the Lower Appellate Court for amendment. The learned Judge of the Lower Appellate Court was, therefore, justified in rejected the amendment application by noting that the application did not meet the requirements of placing before the appellate court the subsequent developments, if any. Hence the impugned order cannot be termed as patently erroneous or perverse so as to cause interference under Article 227 of the Constitution.

2. The petition is rejected summarily.

(B.H. Marlapalle,J.)